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OCT 25 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

In re)	Case No. 05-20041-A-11
RUSS TRANSMISSION, INC.,)	Docket Control No. WFH-4
)	Sept. 26 & 27 and Oct. 5,
Debtor.)	2006

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 26 and 27 and October 5, 2006, the court held evidentiary hearings on the objection of Kirk Nelson to proof of claim of Kevin Nelson. That proof of claim (claim no. 13) was filed on April 26, 2006.

Daniel L. Egan and Megan A. Lewis of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, appeared for the objecting party, Kirk Nelson; Thomas Phinney of Parkinson & Phinney appeared for the creditor, Kevin Nelson; and Thomas Willoughby of Felderstein, Fitzgerald, Pascuzzi & Willoughby appeared for the chapter 11 trustee, Hank Spacone.

Based on the evidence presented, and pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014, the court finds and concludes as announced orally and on the record as well as is set forth below:

1. On January 3, 2005, the debtor, Russ Transmission, Inc., filed a voluntary chapter 11 petition. A trustee was thereafter appointed pursuant to 11 U.S.C. § 1104(a)(2) on or

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1 about February 18, 2005.

2 2. The objection is a contested matter over which this
3 court has subject matter jurisdiction. See 28 U.S.C. § 1334(b).
4 It is a core proceeding. See 28 U.S.C. § 157(b)(2)(B), & (O).

5 3. The objection to the proof of claim and notice of the
6 hearing on the objection, as well as notice of the deadline for a
7 response to the objection, were duly served on all required and
8 necessary parties, including Kevin Nelson and his attorney.

9 4. On April 21, 2006, Kevin Nelson filed a proof of claim
10 demanding payment of \$826,839.28 from the debtor.

11 5. On June 6, 2006, Kirk Nelson filed an objection to the
12 proof of claim.

13 6. The objection is a contested matter over which this
14 court has subject matter jurisdiction. See 28 U.S.C. § 1334(b).
15 It is a core proceeding. See 28 U.S.C. § 157(b)(2)(B), & (O).

16 7. The objection to the claim and notice of the hearing on
17 the objection, as well as notice of the deadline for a response
18 to the objection, were duly served on all required and necessary
19 parties, including Kevin Nelson and his attorney.

20 8. At the hearing on the objection, Kevin Nelson provided
21 the court with a list of advances that he made to, or for the
22 benefit of, the debtor. Kevin Nelson's list of advances totaled
23 \$770,012.95.

24 9. At the hearing, Kevin Nelson's counsel conceded that
25 two entries on the list, one dated 10/28/2005 in the amount of
26 \$1,000, and another dated May 5, 2005 in the amount of \$700,
27 should be deleted.

28 10. At the hearing, Kevin Nelson's counsel informed the

1 court that an additional advance, in the amount of \$2560, should
2 be added to the list.

3 11. With the foregoing deletions and addition to the list,
4 the alleged advances by Kevin Nelson to or for the benefit of the
5 debtor, totaled \$770,872.95.

6 12. Kevin Nelson received payments in the amount of \$90,000
7 and \$15,000 from Kirk Nelson. These payments were made to Kevin
8 Nelson to permit him to cure a default on an indebtedness secured
9 by the Hedge Avenue property. While nominally made to Kevin
10 Nelson, these payments in fact were for the benefit of the debtor
11 because at the time of the payments, the debtor was the
12 beneficial owner of the Hedge Avenue property (see findings and
13 conclusions entered in connection with Docket Control Nos. PP-8
14 and PP-11).

15 13. Kevin Nelson also received a payment of \$50,000 from
16 the debtor to cure the default on the debt secured by the Hedge
17 Avenue property.

18 14. Kevin Nelson retained the \$90,000, \$15,000, and the
19 \$50,000 for his own account and did not apply them to cure the
20 default. Therefore, the debtor has an offset in the amount of
21 \$155,000 for any claim that Kevin Nelson may assert against it.

22 15. Kevin Nelson stipulated that he received payments from
23 the debtor in the aggregate amount of \$189,500 as set forth in
24 Exhibits 113 (spreadsheet) and 128-143 (bank records). These
25 payments constituted repayments of a portion of Kevin Nelson's
26 advances to the corporation or, in the alternative, create a
27 defense of offset, in the amount of \$189,500.

28 16. On December 6, 2004, Kevin Nelson and Stephen Whitmire

1 formed a joint venture called Mayhew Industrial Park Partners
2 ("MIPP"). Kevin Nelson was and is a general partner of MIPP.
3 On or about the same date, MIPP entered into a lease with the
4 debtor for the lease of property on Mayhew Road, Sacramento,
5 California.

6 17. On December 5, 2005, the debtor obtained a judgment
7 against MIPP in the amount of \$284,053.11, plus interest from the
8 date of judgment. As of the date of the hearing, the sum of
9 \$308,000 was due under the judgment.

10 18. As a partner of MIPP, Kevin Nelson is liable for the
11 amount due to the debtor. However, because no judgment was
12 entered against Kevin Nelson, the debtor cannot enforce that
13 judgment against him. Nonetheless, because Kevin Nelson is
14 asserting a claim against the debtor, his liability for the debt
15 of MIPP may be setoff by the debtor against its liability to
16 Kevin Nelson.

17 19. The debtor is entitled to a setoff of \$308,000 against
18 its liability to Kevin Nelson. By allowing this offset, Kevin
19 Nelson is paying the MIPP judgment in full.

20 20. Kirk Nelson contends that the debtor paid Kevin Nelson
21 a salary for periods during which he did not actually work for
22 the debtor. Even if this is correct, the debtor and its
23 principals agreed to this payment with knowledge that Kevin
24 Nelson would be absent from the debtor's business for extended
25 periods. The amount paid to Kevin Nelson was for his work on
26 behalf of the debtor as well as to insure his availability to
27 work for the debtor.

28 12. Debtor's liability to Kevin Nelson is calculated as the

1 amount of the advances (\$770,872.95), less amounts paid to him in
2 connection with the Hedge Avenue property (\$155,000), the
3 repayments of advances (\$189,500), and the MIPP judgment
4 (\$308,000). Thus, Kevin Nelson's claim is properly allowed in
5 the net amount of \$118,372.95.

6 A separate order will be entered sustaining the objection in
7 part.

8 Dated: 25 Oct. 2006

9 By the Court

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12 Michael S. McManus, Chief Judge
13 United States Bankruptcy Court
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CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a judicial assistant to the Honorable Michael S. McManus, mailed by ordinary mail to each of the parties named below a true copy of the attached document.

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Dated: October 26, 2006

Susan C. Cox
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Judicial Assistant to Judge McManus